BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY E. DEEGE Claimant)
VS.)
LARNED STATE HOSPITAL Respondent))) Docket No. 1,040,271
AND))
STATE SELF INSURANCE FUND Insurance Carrier)))

ORDER

Claimant requests review of the November 14, 2008 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

Issues

There is no dispute claimant suffered a work-related injury to her ankle and was provided treatment for her injury. Claimant then requested a preliminary hearing to obtain additional medical treatment regarding her ongoing complaints of low back pain.

After reviewing the IME report of Dr. Paul Stein, the Administrative Law Judge (ALJ) denied claimant's request for additional medical treatment for her low back pain finding that the claimant failed to establish that she was in need of or would benefit from additional treatment for her low back.

The claimant requests review of whether the ALJ exceeded his jurisdiction in finding she did not sustain her burden of proof for obtaining additional medical treatment, if necessary, for her low back.

Respondent argues the Board has no jurisdiction to hear this appeal. In the alternative, the respondent argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order and not every alleged error is subject to review. The Workers Compensation Act gives this Board specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are: (1) did the worker sustain an accidental injury; (2) did the injury arise out of and in the course of employment; (3) did the worker provide the employer with timely notice and with timely written claim; and, (4) do certain other defenses apply. And the term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.¹ Moreover, the Board can review preliminary hearing orders in which an ALJ is alleged to have exceeded his or her jurisdiction.²

The issue of whether a worker needs ongoing medical treatment is not jurisdictional issues listed in K.S.A. 44-534a that is subject to review from a preliminary hearing order. That is an issue over which an ALJ has the sole authority and jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Although claimant also argues that the ALJ exceeded his jurisdiction in not ordering the medical treatment, this Board Member disagrees. The ALJ evaluated the evidence, including the independent medical examination report authored by Dr. Paul Stein and concluded that claimant failed to meet her evidentiary burden as to her entitlement to additional medical treatment. There is nothing within this determination, based upon the evidence contained within this record, that suggests the ALJ exceeded his jurisdiction in making this determination.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

¹ Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² K.S.A. 44-551(b)(2)(A).

³ Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a(a)(2).

WHEREFORE, it is the finding of the Board that the claimant's appeal is dismissed and the Order of Administrative Law Judge Bruce E. Moore dated November 14, 2008, remains in full force and effect.

IT IS SO ORDERED.	
Dated this day of January 2009.	
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JULIE A.N. SAMPLE BOARD MEMBER	

c: Scott J. Mann, Attorney for Claimant Richard Friedeman, Attorney for Respondent and its Insurance Carrier Bruce E. Moore, Administrative Law Judge